

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

**Regular Meeting
May 19, 2020**

OFFICIAL MINUTES Adopted June 16, 2020

Chairwoman Schaefer called the Regular Meeting to order at 7:30 p.m. Board members present were Mr. Ellis, Ms. Pennett, Mayor Balla, Councilman Martino, Mr. Speeney, Ms. Spingler, Mr. Pote and Mr. Fiorilla. Also present were Francis P. Linnus, Esq., Board Attorney, Mr. Thomas Herits, Board Engineer, Mark Healey, Board Planner and Theresa Snyder, Board Clerk. There were 14 members from the public present.

Chairwoman Schaefer read the statement indicating the meeting was being held in compliance with N.J.S.A. 10:4-6 of the Open Public Meetings Act, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. She also stated that in order to comply with the executive orders signed by the governor, and in an effort to follow best practices recommended by the CDC, the meeting was being held virtually for all board members, board professionals, the applicant, the applicant's professionals, interested parties and members of the public. The Board members identified themselves for the record. She then led the flag salute to the American flag.

ORDINANCE REVIEW ORDINANCE OR:20/03

AN ORDINANCE OF THE BOROUGH OF WATCHUNG, COUNTY OF SOMERSET, STATE OF NEW JERSEY, AMENDING CHAPTER XXVIII, ENTITLED, "LAND DEVELOPMENT", SECTION 28-502, ENTITLED "FENCES AND WALLS" OF THE REVISED GERNERAL ORDINANCES OF THE BOROUGH OF WATCHUNG

Mark Healey, PP, gave a brief explanation of the proposed Ordinance.

Board members raised concerns about the Ordinance. They were concerned that it would take away from the rural nature of the Borough.

The Board concluded that the Ordinance was not necessarily consistent with the Master Plan. The Master Plan speaks to the rural character throughout the Borough. There were certain provision in Section A "c" that needed clarification such as the word "walls". The Board made the recommendation that the word "walls" be further defined so as not to allow for 6 ft., solid walls and that the impact on the suburban character of the Borough be sustained.

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

On motion by Madam Chair, seconded by Councilman Martino, the Board directed Theresa Snyder to write a letter to the Mayor and Council base on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Councilman Martino,
Ms. Pennett, Mayor Balla, Mr. Speeney, Mr. Pote,
Mr. Fiorilla and Madam Chair

Nays:

Not Eligible:

Abstain:

Absent:

CASE NO.: PB 19-02; THE LEARNING EXPERIENCE

100 UNION AVENUE

BLOCK: 7801 LOT: 1

Represented By: Stephen F. Hehl, Esq.

BB ZONE

The letter submitted from Stephen F. Hehl, Esq. representing the above captioned application was read into the record. The applicant gave an extension to act through September 30, 2020. The applicant also stipulated to in-person hearings only.

CONTINUED APPLICATIONS

CASE NO.: PB 19-01; BONNIE BURN/BNE

BONNIE BURN ROAD REDEVELOPMENT

BLOCK: 7402/7403 LOT: 19.01 19.02 5 & 10

Represented By: Katherine A. Coffey, Esq.

BBRRA Zone

Expiration: 5/31/20

Ms. Spingler called PB 19-01; BNE.

Mr. Linnus explained that BNE was notified that they were deficient in escrow and therefore violated the escrow agreement established by the Ordinance allowing the Board to dismiss the application without prejudice. Neither Ms. Snyder, Mr. Hance, CFO or Mr. Linnus received any response to their requests for escrow. While trying to

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

acquire the escrow, BNE terminated their contract with the owners. This means there was no longer an application because the applicant abandoned their contract. BNE assigned all rights to the property owner. Mr. Kevin J. Coakley, Esq. of Connell Foley represented the property owners. His client requested that the Planning Board not dismiss the application but rather give an extension of 60 days to the continue the application based on an assignment of rights.

On question of Mr. Ellis, Mr. Linnus responded that BNE had not withdrawn the application.

On question of Mr. Pote, Ms. Schaefer stated that they were looking to continue their application. Since BNE was no longer the applicant, she said that she wanted any new applicant to start at the beginning. Her concern was that the applicant taking over the application would have the means and ability to continue the project. She said BNE went before the Mayor and Council to present their thoughts and became the redeveloper of the property. The land owner wanted the Board to give them a 60 day extension, and they did want to take over where BNE ended. She expressed that any applicant should go before the Mayor and Council to begin the process over before coming to the Planning Board.

In response to Mr. Pote's question, Mr. Linnus said the property owner always has the right to put in an application.

Ms. Schaefer further clarified her comments by saying that legally they can not force any one to go before the Mayor and Council, but she strongly urged them to do so.

Mr. Fiorilla opined that by dismissing the application it would delay the process of adding affordable housing and would be additional financial burden to the developer. If there was no changes to the application, based on the assignments of rights, he would vote to accept the continuation of the application.

Mr. Ellis said that BNE went before the Mayor and Council. A process has been established.

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

On question from Ms. Pennett, Mr. Linnus stated that the Board was not under a directive from Judge Miller. The Board had the jurisdiction to hear the project.

On question of Mr. Herits, Mr. Linnus said the land owner does not have to be appointed as redeveloper. He further stated that he had not seen a developer's agreement.

Mayor Balla also had not seen a developer's agreement.

Kevin J. Coakley, having a business address of 85 Livingston Avenue, #105, Roseland, NJ, 07068, represented the property owners. He stated that the property owners were already part of the application because their names were on the application. He also said the escrow was brought current.

Mr. Linnus asked if he was starting to set forth his legal position.

Mr. Coakley continued asking the Board not to dismiss the application. He said that dismissing the application could have severe affects. The Board was avoiding a decision to grant or deny. He urged the Board to not do this. The property owners have full assignment. The property owners have assumed the place of BNE in the Weldon litigation. They have contracted with Mr. Keller, the applicant's engineer and planner. He further stated that the affordable housing element of the application was essential. The matter had been before Judge Miller. A report was due by the Borough on July 1, 2020 on reporting the status of the application. His client signed the forms as the property owners of this application. To throw out the application is not the right thing to do. There is no redeveloper's agreement. There is not one good reason under law to dismiss the application.

Mr. Linnus responded that the escrow was out of time under the Ordinance. That could be an independent reason to dismiss.

William B. Buter, having a business address of 501 Lenox Avenue, #6, Westfield, NJ, 07090, represented Weldon Materials Inc. He stated that in the two letters sent from Mr. Coakley date 5/13 and 5/14, there was not one Statue or case cited. BNE no longer had standing. They were the owner under contract. They canceled their standing. He

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

questioned why BNE would withdraw. Their extension was until May 31, 2020. They have no standing to extend. The property owners have no application. The property owner can come back and would have the same problem.

Mr. Coakley expressed that the comments of Weldon were looking out for their own interests and not that of the Board's. He strongly suggested to not put the Board in that position but to grant the 60-day extension.

Ms. Schaefer told Mr. Coakley that the Board was allowing him to speak, and recognized that he was making threats. She said the Board would listen to their own attorney, and encouraged Mr. Coakley to comeback.

Mr. Linnus gave the Board the two options before them. One issue was to continue the application granting the 60-day extension and the other issue was to dismiss the application without prejudice based on the failure to pay escrow on time.

When asked, Mayor Balla said he preferred that any new applicants would go before the Mayor and Council.

Mr. Speeney supported the motion to dismiss the application without prejudice.

Mr. Fiorilla said that property changes hands all of the time, and dismissing it would add cost to the project.

Mr. Pote agreed that the application should be dismissed without prejudice. He further said that it was an important step for BNE to go before the Borough Council. It is the most important project in the Borough. It needs to be examined again.

Chairwoman Schaefer opined that BNE walked away and must have had a good reason to do so. She again urged any new applicant to go before the Mayor and Council.

On motion by Madam Chair, seconded by Mr. Ellis, the Board voted to dismiss the application without prejudice based on the following roll call vote:

BOROUGH OF WATCHUNG

PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Ms. Pennett, Mayor Balla,
Mr. Speeney, Mr. Pote, and Madam Chair

Nays: Paul Fiorilla

Not Eligible:

Abstain: Councilman Martino

Absent:

On motion by Madam Chair, seconded by Mr. Speeney, the Board directed Mr. Linnus to draft a Resolution for the Board's action based on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Ms. Pennett, Mayor Balla,
Mr. Speeney, Mr. Pote, and Madam Chair

Nays:

Not Eligible: Councilman Martino and Paul Fiorilla

Abstain:

Absent:

PUBLIC COMMENT

The meeting was open to the public. With there being no comments from the public, the meeting was closed to the public.

ADJOURN

The Board unanimously voted to adjourn the meeting at 9:27 pm.

Respectfully Submitted,



Theresa Snyder
Board Clerk